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In the Supreme Court of the United States

Brief for Respondent in Opposition

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 832

SALYER LAND COMPANY, *Petitioner,*

vs.

COUNTY OF KINGS, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Brief for Respondent in Opposition

THE QUESTION

Whether the complaint filed in the United States District Court affirmatively states a substantial federal question to thereby establish federal court jurisdiction.

THE CONSTITUTIONAL PROVISION AND FEDERAL STATUTE WHICH THE CASE INVOLVES.

The Constitution of the United States, Amendment XIV, Section 1:

". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor

deny to any person within its jurisdiction the equal protection of the law."

Section 1331 of Title 28 of the United States Code:

"(a) The District Courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

STATEMENT

Appellant adopts the opinion of the United States Court of Appeals for the Ninth Circuit for an accurate statement of all material facts.

ARGUMENT

1. The Complaint, and the Cause Initiated by It, Does Not State a Federal Question Within the Jurisdiction of the United States District Court.

Briefly stated, this court is asked to determine whether the complaint filed in the United States District Court stated a cause of action arising under the Constitution, laws or treaties of the United States. Two federal courts, the District Court for the Southern District of California and the United States Court of Appeals for the Ninth Circuit, have concluded that it does not.

The dominant issues raised by the pleading concern the validity and application of the law of the State of California as it relates to the taxation of personal property. The ultimate question to be determined on the merits of the case is whether the petitioner was properly taxed pursuant to the terms and provisions of the state tax law. An incidental question is the ownership of the property. Although necessarily involved in an analysis of the applicability of the state law, the determination of this point is a subordinate issue.

Neither the Commodity Credit Corporation or any other federal instrumentality is a party to the action, and no appearance has been filed on their behalf. No rights or interests of the United States or of any federally created agency are involved. Such rights or interests cannot be affected by the litigation.

The tax imposed by the County was exacted from a citizen of the state of California. It was based upon personal property within the County of Kings on tax levy date. At no time has the County asserted that the United States or any governmental agency through which it acts, is subject to the state property tax in question.

The federal statutes and regulations which relate to the administration of the federal price support program do not bear upon the issue of whether or not petitioner has affirmatively set forth a federal question, and such is the sole issue presented by the petition. Federal laws and regulations are involved in the controversy on the merits to the limited extent that the commodity price support program, announced by the Secretary of Agriculture, is the origin of the Producer's Note and Loan Agreement between the petitioner and the Commodity Credit Corporation. Such laws and regulations, however, relate only to the subordinate question whether petitioner was on tax levy date the owner of the barley taxed under the laws of the state of California, and not to the validity or applicability of the tax.

Although petitioner contends a constitutional question has been raised, the assertion is made without factual support in the complaint. Petitioner does not contend that it has been or will be denied judicial review by established state procedures, nor does it contend that orderly state procedures for the recovery of taxes erroneously or illegally imposed are lacking. In *Winona & St. Peter Land Co. v. Minnesota*, 159 U.S. 526, 537-548, it was held that the Con-

stitution of the United States is satisfied if an opportunity is given to question the validity of a tax either before the amount is determined or in subsequent proceedings for its collection.

In *Davidson v. New Orleans*, 96 U.S. 97, 104, the court stated:

> "That whenever by the laws of a state, or by a state authority, a tax assessment, servitude, or other burden is imposed upon property for the public use; whether it be of the whole State or of some more limited portion of the community, and those laws provide for a mode of confirming or contesting the charge thus imposed in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property, as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however, obnoxious it may be to other objections."

Petitioner has pleaded no facts to establish the tax was not applied uniformally.

2. The Decision of the Court of Appeals for the Ninth Circuit Has Not Created a Conflict in the Circuits as to Whether State or Federal Law Governs the Incidents of Commodity Credit Corporation Contracts.

The California state law relating to the taxation of personal property is not inconsistent with any known or cited federal law, nor is it at all inconsistent with the agreement between petitioner and the Commodity Credit Corporation. This suit does not involve conflicting rules of ownership. Reduced to its simplest import it is purely a local tax refund case not affecting the United States in any of its rights or duties.

The decision by the United States Court of Appeals for the Ninth Circuit in the case at bar was that there is no substantial federal question involved, and that the District

Court's dismissal of it was correct. Respondent believes that this decision is not in conflict with either *U.S. v. LeRoy Dyal Co.* 186 F2d 460, (3rd Cir. 1950) or *U.S. v. McCabe*, 261 F2d 539, (8th Cir. 1958).

In the *Dyal*, and *McCabe*, cases, supra, federal jurisdiction was exclusive and incontrovertible,[1] for in both actions suit was filed by the United States as the real party in interest in contracts entered into by the Commodity Credit Corporation. In the instant case, federal jurisdiction is lacking for two reasons: first, it has not been conferred by statute as is the case wherein a federal agency is a party plaintiff or defendant, and second, no substantial federal question has been stated in the complaint.

Petitioner has confused two separate and distinct issues, one represented by the *Dyal* and *McCabe* cases, and the other by the case at bar.

The decisions of the Third (*Dyal*) and the Eighth (*McCabe*) Circuits, which petitioner argues are at odds with the decision of the Ninth Circuit, had to do with the issue as to whether state or federal law should be the federal rule. The issue raised in the Ninth Circuit decision is whether the United States District Court had jurisdiction of the case as one presenting a substantial federal question.

U.S. v. LeRoy Dyal, was an action by the United States to recover liquidated damages provided for by a contract

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1. 15 U.S.C. 714 b (c):

"... The district courts of the United States, including the district courts of any Territory or possession, shall have exclusive original jurisdiction, without regard to the amount in controversy, of all suits brought by or against the Corporation: Provided, That the Corporation may intervene in any Court in any suit, action, or proceeding in which it has an interest ... Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of the subsection (c) of this section to the same extent as though such suit were by or against the Corporation ...

between the defendant and the Commodity Credit Corporation. State law relating to the validity of the liquidated damage provision was declared inapplicable in view of the principle declared in *Clearfield Trust Co. v. United States*, 318 U.S. 363 (9th Cir. 1942). In the latter case it was stated that the application of state law would subject the rights and duties of the United States to exceptional uncertainty.

In U.S. v. McCabe, the issue was whether state legislation controlled so as to wipe out a cause of action in favor of the United States given by the Commodity Credit Corporation contract. It was an action by the United States to recover damages for conversion of grain upon which the Commodity Credit Corporation held warehouse receipts. Had state law been adopted as the federal rule, a substantial right of the United States would have been defeated.

In neither the Third or the Eighth Circuit case was there any question whatever as to whether the complaint and the cause initiated by it presented a substantial federal question to be decided by the federal court. But this is the precise question presented for review in the case now before the Supreme Court.

3. Bell v. Hood Is Not Inconsistent with the Holding of the District Court and Court of Appeals.

Petitioner has placed great emphasis upon the Court's opinion in *Bell v. Hood*, 327 U.S. 678. It seems to urge that the language of the opinion is so broad as to permit a pleader to bring a case within the jurisdiction of a federal court by so drafting the initial pleading as to require the Constitution or a federal law to be interpreted in the course of decision. In the judgment of respondent, the case does not support such a conclusion.

In *Bell v. Hood*, plaintiff sought recovery squarely on the constitutional guarantees contained in the Fourth and Fifth Amendments to the Constitution of the United States. It was the purpose of the pleader to make the alleged violations the basis of the action. Whether petitioners in *Bell v. Hood* were entitled to recover damages depended upon an interpretation of the Constitution. The Court declared that it is the right of the pleader to select the law upon which he will rely for recovery. That an action might have been commenced in a state court, is no bar to a federal action if the basic issue raised by the complaint turns on a "federal question." The Court did not alter the long established rule requiring an affirmative statement of the substantial "federal question" involved in the controversy.

In *Gully v. First National Bank*, 299 U.S. 109, Justice Cardozo clarified the test to be used to determine what constitutes a "federal question." The rule is that to bring a case in the federal court by reason of the existence of a "federal question," a right or immunity created by the Constitution or laws of the United States must be an essential element of the plaintiff's cause of action. This rule has not been restricted or abrogated by *Bell v. Hood*.

Neither the District Court nor the Court of Appeals mentioned *Bell v. Hood* in their opinions. Such mention was not necessary, for both courts clearly stated the cause set forth in the complaint did not have as its primary, direct and dominant issue, a right or immunity created by the Constitution or laws of the United States. In the absence of such issue, no substantial federal question has been raised by the complaint. *Bell v. Hood* does not bear upon the issue presented by the petition herein.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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April 18, 1961